IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2111 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE RAVI R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

HARSH INDUSTRIES

Versus

GUJARAT ELECTRICITY BOARD

Appearance:

1. Special Civil Application No. 2111 of 2001
MR JITENDRA MALKAN for Petitioners No. 1-2
MR NK MAJMUDAR for Respondent

CORAM : MR.JUSTICE RAVI R.TRIPATHI

Date of decision: 28/11/2001

ORAL JUDGEMENT

1. The present petition is filed challenging the order passed by the appellate committee of the Gujarat Electricity Board (hereinafter referred to as "GEB") in

its meeting held on 14.2.2001, whereby the appeal filed by the petitioners was partly allowed. The respondent Board was directed to revise the Special Bill by taking B x C at 0.25 and factor `D' at 133 x 24 hours keeping factor `A' unchanged.

2. The facts giving rise to the present petition are that the electrical installation of the appellant bearing Consumer No.and Category I-105 situated in Naroda was checked by I/c Squad, Sabarmati on 28.7.2000 in presence of the representative of the appellant and during that checking, the appellant was found using 73.5 HP connected load unauthorisedly. It was further found that there was no seal on the meter box and the meter body seals were tampered and disturbed. It was found that there was a gap on the upper portion of the meter glass through which a strip can be inserted to stop the rotation of the meter disc. The meter of the appellant was, therefore, removed, packed and sealed for the laboratory inspection. The meter was thereafter inspected on 31.7.2000 and during that laboratory inspection, irregularities found in the meter at the time of checking were confirmed. The appellant was thereafter booked for theft of electrical energy by tampering with the seals of the meter body and meter mechanism and a special bill amounting to Rs.5,98,859/- was issued to the appellant by the respondent Board for theft of electrical energy. The appellant deposited a sum of Rs.1,79,659/- on 1.8.2000, thereafter, the connection of the appellant was reconnected on 08.08.2000. The appellant then filed an appeal before the appellate committee, which has been partly allowed.

3. Mr. Malkan, learned Advocate appearing for the petitioner, vehemently submitted that at the time of inspection in the month of February, 2000, the inspecting party has recorded that the meter was faulty and not only that, in item no.3, they had in terms recommended that "the meter should be replaced". Mr. Malkan submitted that in spite of the recommendation made by the inspecting squad, the said meter was not replaced. The installation of the petitioner was inspected on 28th July, 2000. Mr. Malkan submitted that when the meter was found to be faulty in the month of February, 2000 itself, the petitioner cannot be held liable for any fault on his part and he cannot be served with an additional bill. The submissions of Mr. Malkan cannot be accepted in view of the contents of the inspection report of the inspection carried out on 28th July, 2000. It is important to note that the inspection party has recorded in item no.1 that, "The consumer is drawing

excess load than the contract load." The other findings recorded by the inspection party are as under :

"2. There is no seal found on the box;

3. The meter body seals are bad seal and the same are tampered with.

3. In the upper portion of the glass fixed on the meter, there is a gap and part of the meter glass is broken and from that broken part, if a strip is inserted, the same is able to reach to the disc and the same stops.

4. The sequence of the seal cover, which is fixed on the meter body, is not maintained."

Mr. Malkan, learned Advocate for the petitioner, submitted that the appellate authority has not considered the contentions raised by the petitioner before the Appellate Committee. The order of the Appellate Committee of Gujarat Electricity Board is produced at Annexure-A running from page nos. 12 to 16. Mr. Malkan took all pains and invited the attention of the Court to the said order. Mr. Malkan submitted that the Appellate Committee has not dealt with the contentions of the petitioner and has given its finding relying upon the averments made by Shri V.P. Patel, Deputy Engineer (Naroda). The said contention of Mr. Malkan is not well placed and cannot be accepted as all the contentions raised by the appellant are discussed in detail in 3 paragraphs starting from page no. 14 to page 15 and after having noted all these contentions. The Appellate Committee has given its finding, which runs from page nos. 15 to 16. The relevant portion of which reads as under:

"We have given thoughtful consideration to this contention of the appellant. If we peruse and consider the evidence available on record, we find no substance in this entire contention of the appellant. The appellant has, in this connection, relied on approval of label vide enclosure 5 with his objections. That enclosure 5 is of no use in this connection. Approval of the mark obtained at any time after manufacturing. What is prohibited is a sale of the product without the approval of the mark. So, it cannot be believed that the unit of the

> appellant was closed for want of the label approval. The consumption record on the contrary shows that the unit of the appellant was working during those months. No doubt, it is stated in the consumption record that the unit was locked. But, the figures of consumption during the month of June comes to round about 12500. While the consumption was to the tune of 260 units in the month of January'2000. While the units of the consumption in the month of July come to 3000 units...."

It may be noted that this is in view of the defence put forward by the petitioner that the petitioner-unit was earlier in the business of manufacturing reactive dyes prior to February'2000, after which the petitioner started manufacturing food colour since February'2000. The case of the petitioner is that as the food colour can be sold only with I.S.I. mark, the unit of the petitioner was closed till the approval of the mark is obtained. This story cannot be believed and is rightly not believed by the Appellate Committee.

4. In view of the aforesaid discussion, having found no merit in the submissions of Mr. Malkan, learned Advocate for the petitioner, and having found no infirmity in the order of the Appellate Committee, this petition fails and the same is rejected. Rule is discharged. No order as to costs.

Mr. Malkan, learned Advocate for the petitioner, submitted that time granted to make the payment of the amount in question expires on 30th November, 2001. He, therefore, requested that the same may be suitably extended so as to enable the petitioner to pay the amount within extended time. He further requested that the amount being huge, he may be given two months' time to pay the same in two equal installments. The request is reasonable and the same is granted. The petitioner shall pay the amount of the impugned bill in two equal monthly installments latest by 31st January, 2002. This time is granted on condition that 50% of the amount shall be paid on or before 31st December, 2001. Direct Service is permitted.

(Ravi R. Tripathi, J.)

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